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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
Policies and Rules Concerning ) MM Docket No. 93-48  
Children's Television Programming )  
)  
Revision of Programming Policies )  
for Television Broadcast Stations )

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OFFICE OF THE SECRETARY

REPLY COMMENTS OF

THE CENTER FOR MEDIA EDUCATION,  
AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS,  
CENTER FOR THE STUDY OF COMMERCIALISM,  
PEGGY CHARREN, CONSUMER FEDERATION OF AMERICA,  
COUNCIL OF CHIEF STATE SCHOOL OFFICERS,  
NATIONAL ASSOCIATION OF CHILD ADVOCATES,  
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NATIONAL ASSOCIATION FOR FAMILIES AND COMMUNITY EDUCATION,  
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NATIONAL COUNCIL OF LA RAZA, NATIONAL EDUCATION ASSOCIATION,  
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## TABLE OF CONTENTS

Summary . . . . .	i
I. The Record in this Proceeding Confirms that Children's Educational Television Has Improved Little Since the Passage of the Children's Television Act of 1990 . . . .	2
A. The Total Amount, Scheduling and Promotion of Children's Educational Programming Remains Inadequate . . . . .	3
B. Governmental Action is Required Precisely Because Market Forces Work Against the Provision of Educational Children's Programming . . . . .	7
II. The Commission Should Adopt Both a Substantive Definition of Educational Children's Programming, and a "Process-Oriented" Definition of "Core" Programming .	10
A. The Commission should adopt a general definition of educational and informational children's programming to better assure compliance with the CTA . . . . .	12
B. The Commission's Proposed Definition of "Core" Programming Sets Up a False Dichotomy Between Education and Entertainment . . . . .	13
C. The Commission Should Also Set Out a "Process Oriented" Approach to "Core" Programming to Help Broadcasters in Developing "Core" Educational Programming, and Afford Complete Assurance of Meeting the CTA's Requirements . . . . .	15
III. The Commission Should Establish a Processing Guideline of One Hour Per Day of "Core" Programs that are Standard-Length, Regularly Scheduled and Aired at Appropriate Times . . . . .	17
A. Processing Guidelines Provide Useful Guidance to the FCC Staff, the Public and Broadcasters, But Do Not Operate as Mandatory Requirements . . . . .	18
B. One Hour Per Day of "Core" Educational Programming is a Reasonable Amount for the Guidelines . . . .	23
C. Only Standard Length Core Programming Should be Counted Toward the Guideline . . . . .	26
D. Only Regularly Scheduled "Core" Programming Should Count Toward the Processing Guideline . . . . .	28

E.    Only Programming Aired Between 7:00 a.m and 10:00 p.m. Should Be Counted Toward the Processing Guideline . . . . .	29
IV.    The Children's Television Act, As Well as the Proposed Definitions and Processing Guidelines, Are Constitutional . . . . .	32
A.    The Public Trustee Scheme is Constitutional . . .	32
B.    The Use of a Processing Guideline is Constitutional . . . . .	37
Conclusion . . . . .	39
Appendix	
Letter from Nancy Signorielli, Ph.D. <u>re</u> : NAB Study	

## **SUMMARY**

The Center for Media Education and the other groups and individuals filing with us are pleased that the Commission is continuing its inquiry into broadcaster compliance with the Children's Television Act of 1990. We endorse the Commission's factual findings as described in the Notice of Inquiry, and believe that the situation has changed little in the last year. Although the industry claims that "the Act is working," the study on which it bases this finding is methodologically flawed and therefore its conclusions should be regarded with suspicion. Additionally, recent studies conducted by CME directly contradict the industry claims, and also demonstrate how current business practices in the market have made it extremely difficult for educational and informational programming to gain entry and survive in the current marketplace.

The record in this proceeding demonstrates that if the Commission fails to clarify and strengthen its children's television policy, it will send the message to licensees that their obligations to serve children need not be taken as seriously, and we can expect to see even less educational children's programming than is currently available. Thus, we urge the Commission to more explicitly define "educational and informational children's programming," as well as "core" or "specifically designed" programming.

Specifically, we suggest first that the Commission clarify its definition of "educational," to help alleviate broadcaster confusion over what kinds of programs are in compliance with the

obligations imposed by the CTA. Second, we recommend that the Commission specify that "core" programming be defined as children's programming that has as its explicit purpose service to the educational and informational needs of children. Furthermore, the educational purpose of each program to be claimed as "core" programming should be documented in an explicit written statement developed at the time the program is evolved.

We also recommend that the Commission adopt processing guidelines for "core" programming. Such guidelines are unquestionably constitutional since the renewal of a license is not conditioned upon a broadcaster's compliance with them. Instead, they simply provide assurance to licensees that if they air programming in accordance with the guideline, they can be assured of renewal, while if they choose to fulfill the obligations of the CTA in other ways, the Commission staff will need to examine those efforts more closely to determine whether renewal is appropriate. To meet the processing guideline, a licensee would need to broadcast one hour per day of standard length, regularly scheduled "core" programming, aired between 7:00 a.m. and 10:00 p.m. "Other" programming, such as general-audience shows, public service announcements, "interstitials," nonbroadcast efforts and the like would still be considered as contributing to a broadcaster's service to children, but need only be examined if a station is unable to meet the guideline and is referred for full-scale review.

These changes should assist licensees in meeting their obligations, as well as simplify the Commission's review of each licensee's performance during the renewal process. Adopting these important proposals will help make the Act's promise of educational television for all of our children become a reality. Although there has been a slight increase in the amount of educational programming in the last year, it is clear that these actions are in response to congressional oversight and public pressure. Without further action by the Commission, these improvements will be short-lived. We urge the Commission to act quickly to implement these proposals.

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The Center for Media Education, American Association of School Administrators, Center for the Study of Commercialism, Peggy Charren, Consumer Federation of America, Council of Chief State School Officers, National Association of Child Advocates, National Association of Elementary School Principals, National Association for Families and Community Education, National Black Child Development Institute, National Council of La Raza, National Education Association and the National PTA, hereby submit the following reply comments in response to the comments and testimony filed for the Commission's en banc hearing in the above-captioned proceeding. These reply comments are submitted by their attorneys, the Institute for Public Representation.

The Center for Media Education and the other groups and individuals filing with us ("CME et al.") respond to the testimony presented at the Commission's en banc hearing held June 28, 1994, and to comments filed in this proceeding on June 15, 1994. We believe that the record in this proceeding overwhelmingly demonstrates the need for the Commission to take further action to ensure that television stations are meeting their obligations under the Children's Television Act of 1990

("CTA").<sup>1</sup> We therefore again strongly urge the Commission to clarify and specify its expectations of licensees by adopting definitions of educational programming and "core" programming and utilizing processing guidelines. Such measures, rather than imposing "new" or "constitutionally questionable" requirements on licensees, would clarify existing obligations and greatly assist both licensees and the Commission in discharging their responsibilities under the CTA.

**I. The Record in this Proceeding Confirms that Children's Educational Television Has Improved Little Since the Passage of the Children's Television Act of 1990**

In issuing its Notice of Inquiry ("NOI") over one year ago, the Commission noted that since October 1, 1991 (the effective date of the Commission's policies and rules implementing the CTA), there had been "little change in available programming that addresses the needs of the child audience."<sup>2</sup> At the Commission's recent en banc hearing on June 28, 1994, most industry commenters argued otherwise.<sup>3</sup> Thus, Paul La Camera of the National Association of Broadcasters ("NAB") testified that "children's programming is alive and well in America," and that "the Act is working." NAB Testimony at 2, 4. But testimony by

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<sup>1</sup> 47 U.S.C.A. §§ 303a & 303b (1993 West Supp.).

<sup>2</sup> NOI at ¶ 6.

<sup>3</sup> See generally Comments of Capital Cities/ABC, Inc. ("ABC"); Fox Children's Network ("Fox"); National Broadcasting Company, Inc. ("NBC"); National Association of Broadcasters ("NAB"); National Association of Television Program Executives ("NATPE"); CBS, Inc. ("CBS"); Association of Independent Television Stations ("INTV").



CME, Peggy Charren, NEA and others showed that the increase in educational programming has been slight, at best.<sup>4</sup> CME's Study<sup>5</sup> documented the institutional, economic and attitudinal barriers to the amount and sustainability of educational children's programming, and argued that without effective governmental oversight, any increase in the amount of such programming will be short-lived.

**A. The Total Amount, Scheduling and Promotion of Children's Educational Programming Remains Inadequate**

CME et al. strongly disputes the claim of industry representatives that "local broadcasters and the marketplace have responded with ... a dramatic increase in the amount of educational and informational programming." NAB Comments at 1.<sup>6</sup> While there has been some increase in the amount of educational programming that broadcasters claim is "specifically designed for children," the total number of hours per week of such programming

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<sup>4</sup> For example, testifying on behalf of the American Psychological Association ("APA"), Dr. Dale Kunkel of the University of California at Santa Barbara found in his analysis of renewal applications that many stations did not even comply with existing FCC regulations. Twenty-one percent of the stations surveyed listed no "specifically designed" educational programming whatsoever, while 29% failed to comply with the Commission's minimum reporting requirements by not listing the time, date, duration and brief description of each claimed program. APA Testimony at 4.

<sup>5</sup> Patricia Aufderheide and Kathryn Montgomery, The Impact of the Children's Television Act on the Broadcast Market (filed in this proceeding on June 15, 1994).

<sup>6</sup> Other representatives of the viewing public generally share CME's perception that the industry response to the CTA has been inadequate. See, e.g., Comments of American Psychological Association ("APA"); Children Now; Millicent Green; Maryland Campaign for Kids TV; Hastings College.

is still barely above the level of educational programming the Commission found in the 1970s, a level judged by the Commission at that time as "clearly inadequate."<sup>7</sup> And, in addition to overall limited quantity, the few educational programs that were aired faced numerous obstacles such as poor scheduling, low budgets and lack of promotion. CME Study at 13-17.

NAB bases its conclusion that "the Act is working" on the results of a survey it conducted of commercial television stations as to the amount of educational programming broadcast in the 1990 and 1993 seasons. NAB's survey purports to show an increase in regularly scheduled children's educational and informational programming from 2 hours per week in 1990 to 3-1/2 hours per week in 1993. NAB Study at 3. The methodology of the NAB study is problematic, however, and thus the conclusions it draws are questionable. As described in detail in an attachment to these Reply Comments, Professor Nancy Signorielli has examined the NAB Study and identified numerous flaws. Among other things, she points out that the definition of educational programming is "quite vague," the self-selected nature of the responses are likely to over-estimate the amount of programming available, and reconstruction of schedules without the benefit of programming logs is highly unreliable.

Despite claiming that it "asked stations to classify programs using the same criteria they would use in documenting compliance with FCC children's programming rules," NAB Comments

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<sup>7</sup> See APA Testimony at 5.

at 2, the NAB defined educational and informational programming in a different way from that specified in the FCC regulations.

The definition of educational and informational children's programming used by NAB is "Programming originally produced and broadcast for an audience of children 16 years old and younger which serves their cognitive/intellectual or social/emotional needs". NAB Study at 2, (emphasis added). The FCC regulations state that stations must document "the extent to which the licensee responded to the educational and informational needs of children in its overall programming, including programming specifically designed to serve such needs." 47 C.F.R. § 73.3526(a)(8). Educational and informational programming is defined as "any television programming which furthers the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social emotional needs." 47 C.F.R. § 73.681.

The FCC regulations create in effect two categories of programming: 1) programming specifically designed to serve children's educational and informational needs, and 2) other programming that contributes to fulfilling children's educational needs. The NAB lumps these two categories together in a way that creates ambiguity and confusion. Its definition leaves out the key concept that some programming must be "specifically designed" to meet children's educational needs. The NAB definition permits licensees to count any programming produced for children that

could possibly be construed to serve their educational needs, whether or not it was specifically designed to do so.

As a result, it is impossible to tell whether the NAB Study counts only programming specifically designed to educate and inform children, or whether it includes a much larger category of children's programming that contributes in some way to a child's educational or informational needs. This problem is compounded by NAB's failure to provide any of the underlying data, making verification impossible. In view of the types of programs licensees have reported as educational in their renewal filing with the Commission,<sup>8</sup> the Commission must be most skeptical about accepting licensees' reporting of programs as educational at face value. If the Commission is to place any significant

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<sup>8</sup> In reviewing 58 renewal applications from 15 metropolitan areas, CME found for example, that stations listed as children's educational programming such programs as "Tiny Toon Adventures," "Bucky O-Hare," "Tale Spin," "Ducktales," "Chip 'n' Dale Rescue Rangers," "Casper," "GI Joe," "Super Mario Brothers: 4, Yo Yogi!," and "Prostars." Report on Station Compliance with the Children's Television Act, Sept. 29, 1992, at 6 (CME Report) (This report was filed as an attachment to the Comments of CME et al. filed in this docket on May 7, 1993).

These findings are similar to those made by Dr. Dale Kunkel. In his study of license renewal filings, he found that broadcasters listed as educational such programs as "G.I. Joe," and "Teenage Mutant Ninja Turtles," on their renewal applications. APA Comments at 4.

Nor, does it appear that such practices have ended. For example, in its quarterly report for the period of October 1, 1993 to December 31, 1993, (WUSA-TV, Washington, D.C.) listed "Disney's Little Mermaid" as "regularly scheduled full-length children's program which served children's educational and informational needs" because "the lead character is a smart, brave, and good-hearted young mermaid named Ariel, who provides a very positive and attractive role model in a female character."

reliance on the NAB Study, we urge that it must obtain, examine and make available for public comment the underlying data.

Even if one assumes that the NAB survey reported only programming specifically designed to educate and inform children, the amount of that programming in both years surveyed is quite small. An 81% increase over two years may be a good return on a mutual fund, but here it merely represents an increase from 2 hours a week in 1990 to 3-1/2 hours in 1993. NAB Study at 3. That raises the critical question: is 3-1/2 hours of such programming sufficient to indicate compliance with the CTA? We submit that it is not.

In sum, the record in this proceeding demonstrates that there is still little educational and informational programming on the airwaves available for children. The NAB Study, at most, shows a small increase in the quantity of such programming since passage of the CTA, and even this self-serving claim of a small increase must be verified before the Commission can ascribe decisional significance to it.

**B. Governmental Action is Required Precisely Because Market Forces Work Against the Provision of Educational Children's Programming**

CME's 1994 Study documented how current business practices, especially in the syndication market, have made it almost impossible for educational and informational programming to gain entry and survive in the marketplace. CME Study at 17-22. Toy and product based shows account for nearly 90% of all new production in the children's television market. CME Study at 5.

Because of barter/syndication practices and product licensing agreements, this type of programming is more profitable than educational or informational programming. Not only do stations receive such programming for free along with half of the advertising time, but they often can obtain commitments from the toy manufacturer to buy advertising time. Id. at 18-19. Naturally, stations choose to air this more profitable programming, leaving little time, almost always during undesirable time periods, for more educational fare.

That the marketplace is hostile to the airing of children's educational programming is supported by comments from broadcasters. Act III Broadcasting, for example, states that the "economics of the television business make the production of quality long form programs extremely difficult to sustain in mid-size and small markets." Act III Supplemental Comments at 5. CBS suggests that educational programming for children can only survive on PBS and on cable, i.e., outlets which do not rely exclusively on audience-based advertising sales to survive. CBS Testimony at 4.

In effect, these broadcasters are saying that they could make more money if they were not required to air children's educational programming. This is undoubtedly true. But this argument is beside the point.<sup>9</sup> The CTA requires that each

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<sup>9</sup> The financial health of a station has no relevance to the public interest unless it seriously imperils the station's ability to continue broadcasting or to meet other core public interest obligations. No such showing has been made in this proceeding. Of course, if such a showing could be made, it could

station serve the educational and information needs of children with programming specifically designed for them. 47 U.S.C. § 303b(a). This is a core public service obligation expressly singled out by Congress. Each television licensee must therefore meet its obligation in this vital respect. Indeed, it is shocking to find that any broadcaster disputes this point. Broadcasters have strongly opposed a new gross receipts tax that is being proposed to cover GATT revenue losses on the ground that they must meet public interest obligations, rather than simply operate as profit-maximizing businesses.<sup>10</sup> It follows that they must, above all, meet this core public service obligation to children.<sup>11</sup>

Other than redefining program length commercials to prohibit such product tie-ins on children's programs, the only way to change the marketplace barriers faced by the producers of educational programming is to let the industry know that the

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be taken into account at renewal.

<sup>10</sup> See Multichannel News, May 23, 1994, at 130; Broadcasting, June 6, 1994, at 50. As Kidsnet points out: "the industry has argued for years that in lieu of a spectrum fee they offer programming in the public interest. Thus the fact that the economics of children's television programming are different than the financing of adult programming is in a real sense irrelevant." Kidsnet at 3.

<sup>11</sup> For the same reasons, it is irrelevant that several commenters suggest that children's educational needs are already being adequately served by non-commercial television or cable television. See, e.g., CBS at 4; RTNDA at 9. This claim is also untrue. About 40% of families do not subscribe to cable. Moreover, children of families with limited resources who most need the educational programming, are less likely to have cable available to them.

Commission is truly serious about enforcing broadcaster's obligations under the CTA. History shows that "reliance on the unregulated marketplace produces virtually no educational children's programming on commercial broadcasting television." Kunkel at 1-3.<sup>12</sup> Indeed, the very reason why the CTA was necessary was because market forces had failed to provide service to children.

The Commission's issuance of the NOI and the hearing held by Congress last spring did result in increased industry efforts to produce and air educational children's programs. CME Study at 7-9, 23-24. Experience demonstrates that if the Commission fails to clarify and strengthen its children's television policy, it will send the message to licensees that their obligations to serve children need not be taken as seriously and we can expect to see even less educational children's programming than is currently available. Thus, we urge the Commission to take the steps outlined below to increase the availability of diverse children's educational programming as intended by Congress.

## **II. The Commission Should Adopt Both a Substantive Definition of Educational Children's Programming, and a "Process-Oriented" Definition of "Core" Programming**

One of the major issues in this proceeding is the definition of "educational and informational programming." The Commission currently defines "educational and informational" programming as

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<sup>12</sup> Dr. Kunkel observes that "in the face of generic calls for improvement, the response has typically been a modest effort at best. In the absence of any threat of regulation, children's educational programming essentially disappeared." Kunkel at 3.



any television programming which furthers the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs.

47 C.F.R. § 73.671 note (1992). Licensees are required to respond to the educational and informational needs of children through their stations' overall programming, including programming "specifically designed" to serve such needs.<sup>13</sup>

As we noted in our earlier Comments in this proceeding, this definition has failed to provide sufficient guidance to broadcasters, who have stretched it to the breaking point by claiming that such shows as "The Jetsons" and "G.I. Joe" are educational.<sup>14</sup> Now, over one year after the earlier Comment period in this proceeding has closed, it is evident that there still exists a misunderstanding in the broadcast industry about the definition of educational television. This misunderstanding was highlighted quite recently during the Commission's en banc hearing, when Bruce Johansen of NATPE asserted that any sitcoms with children such as "Full House" and "Family Ties" that offer pro-social messages are educational.

To address these issues, we propose that the Commission adopt a more precise definition of "educational and informational programming" as it is used in the CTA, as well as separate

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<sup>13</sup> Children's Television Act of 1990, 47 U.S.C. § 303b(a)(2). See also Children's Television Reconsideration Order, 6 FCC Rcd 5093, 5101 (1991).

<sup>14</sup> See Comments of CME et al., In the Matter of Policies and Rules Concerning Children's Television Programming, Revision of Programming Policies for Television Broadcast Stations, MM Docket No. 93-48, May 7, 1993, at 10.

substantive and process-oriented definitions of "core" programming.

**A. The Commission should adopt a general definition of educational and informational children's programming to better assure compliance with the CTA**

Clarifying the definition of educational programming is essential to eliminating vagueness and misunderstanding and to assuring that programs labeled "educational" really are educational. Consequently, CME et al. recommends that the Commission amend its current definition to one similar to that proposed by CME et al. in its earlier Comments in this proceeding.<sup>15</sup> Specifically, we recommend that the Commission define educational/informational programming in this way:

Educational and informational television programming is television programming that genuinely furthers the understanding of children 16 years of age and under of subjects such as history, science, literature, the environment, drama, music, fine arts, current events, human relations, other cultures or languages, and of skills which are crucial to a child's cognitive and social development.

This definition is similar to that in the 1974 Policy Statement. 50 FCC 2d 1, 7 (1974). Adopting this definition would not only give broadcasters more guidance in designing and scheduling children's programming, it would also make it easier for the Commission to determine whether licensees are meeting their obligations under the CTA in two ways. First, since the proposed definition of "core" or "specifically designed" programming necessarily includes references to education, it is

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<sup>15</sup> Comments of CME et al., May 7, 1993 at 11.

important to have an understanding of what is meant by that term in the context of television programming.<sup>16</sup> Second, the definition establishes criteria to ascertain whether "overall" or "general audience" programming is educational.

**B. The Commission's Proposed Definition of "Core" Programming Sets Up a False Dichotomy Between Education and Entertainment**

The Commission has recognized that licensees must air some standard length, "core" programs that are "specifically designed to serve the educational and informational needs of children." NOI at ¶ 4. Thus, for a broadcaster to have its license renewed, the Commission has specified that it must demonstrate that it has aired at least some "core" programming. The Commission has proposed a definition of "core" children's programming, which specifies that

the primary objective . . . should be educational and informational, with entertainment as a secondary goal. In other words, we believe broadcasters should focus on programming that has as its explicit purpose service to the educational and informational needs of children, with the implicit purpose of entertainment, rather than the converse.

NOI at ¶ 8 (emphasis in original).

This proposed definition of "core" educational programming has generated considerable concern among members of the

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<sup>16</sup> For example, CME et al.'s proposed definition of "core" educational programming describes the process by which such programming would be created. Since a significant step in that process is that "programs must be created to fulfill explicit educational goals," (see infra at 15.) it is vital to have an understanding of what is educational.

commercial broadcast industry.<sup>17</sup> These commenters have argued that by considering this definition, the Commission "threatens to frustrate the purpose of the CTA by proposing to recognize only those educational programs whose entertainment value is relegated to secondary status." Disney Comments at 2. Another commenter asserted that "the primary/secondary relationship between entertainment and education is a false dichotomy that will have a chilling effect on creativity." NBC at 4. Finally, the industry has asserted that the Commission's proposed clarification will give broadcasters the "strong incentive" to air "pedantic and dull programs to ensure that they have met their educational programming obligations." Disney Comments at 6.

While we agree with the Commission that the primary objective of "core" children's programming should be educational and informational, we also believe that the Commission has unintentionally set up a false dichotomy between education and entertainment by explicitly mandating that entertainment must be secondary to education. The Commission's proposal rightly recognizes that for a licensee to claim that any given program is "specifically designed" to serve the educational needs of children, it must be able to demonstrate that the program has education as its explicit purpose. At the same time, however, we respectfully suggest that the Commission's proposed definition invites the kind of excuses offered by Disney and Bill Nye as to whether "Bill Nye the Science Guy" would meet the definition of a

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<sup>17</sup> See e.g., Comments/Testimony of ABC, Disney, Fox, NBC.

core program, since, as Bill Nye himself testified, the program is "more than 50 percent entertainment or kids wouldn't watch." Testimony of Bill Nye/Disney at 3. Determining the relative proportions of entertainment and education is a difficult, if not impossible, task. To avoid such confusion and speculation, we recommend that the Commission abandon its proposed "primary purpose" definition of "core programming" in favor of a definition that simply states that such programming has as its explicit purpose service to the educational and informational needs of children.<sup>18</sup> Additionally, the educational purpose of each program should be documented in an explicit written statement adopted at the time the program is developed.

**C. The Commission Should Also Set Out a "Process Oriented" Approach to "Core" Programming to Help Broadcasters in Developing "Core" Educational Programming, and Afford Complete Assurance of Meeting the CTA's Requirements**

A process-oriented approach would set out procedures that if followed by a licensee or program provider, would provide great assurance to broadcasters in meeting the Commission's mandate that some standard length programs must be "specifically designed" to serve the educational and informational needs of children. Such an approach would assist licensees and the Commission because of its focus on process rather than content, and could serve as an alternative definition or approach which, if adopted by licensees, afford complete assurance of compliance.

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<sup>18</sup> No effort should be made to break the programs into specific components or percentages of education versus entertainment.

To this end, as a voluntary alternative, we endorse the process definition proposed by CTW in its Comments/testimony in this proceeding. CTW's definition states that in order to qualify as programming "specifically designed" to serve the educational and informational needs of children, such programming must "first, be developed with the assistance of independent educational advisors; second, be created to fulfill explicit written educational goals; and third, be evaluated for effectiveness." Copies of both the goal statement and the program evaluation would be placed in the Public Inspection file of each station. CTW Comments at 2-3.

As CTW outlines in its Comments, this process-oriented definition of "core" programming offers several advantages. First, by explaining to licensees how "core" programming should be produced, rather than what such programming should look like, CTW's definition avoids the First Amendment concerns associated with definitions that explicitly seek to regulate the content of programming.<sup>19</sup> Second, the definition proposed by CTW will provide broadcasters with a clear and cogent explanation of the Commission's expectations as to the process by which "core" programming will be created, thus avoiding the confusion associated with definitions that focus on the substance of programming. Finally, the speculation associated with the "primary purpose" definition, as to whether a program would be

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<sup>19</sup> The First Amendment arguments will be addressed more fully in Part IV.

deemed "specifically designed" to be educational as opposed to entertaining, would be avoided by the use of a process-oriented definition, because broadcasters would have developed the program to "fulfill explicit written educational goals." This would eliminate Disney's above-described concern about the difficulty in assessing what percentage of a program is entertainment and what percentage is educational.

We strongly prefer this approach. We label it as voluntary because we have doubts about whether the Commission can require the use of independent (as opposed to "in-house") educational advisors or the evaluation for effectiveness. (We have no doubt as to the Commission's authority to require that the educational goals be written down.) But it seems to us that the industry should welcome this approach. It represents a common sense and indeed accepted approach to furnishing specifically designed educational programming, and if followed, would clear up any possible confusion in the industry. By implementing a general definition of educational programming, as well as substantive and process-oriented definitions of "core" programming, the Commission will help to ensure that broadcasters have a clearer understanding of its expectations of exactly what constitutes educational children's programming, and will therefore better enable licensees to meet their obligations under the CTA.

**III. The Commission Should Establish a Processing Guideline of One Hour Per Day of "Core" Programs that are Standard-Length, Regularly Scheduled and Aired at Appropriate Times**

In addition to adopting clear definitions of "educational and informational" programming and "core" programming, CME et al. recommends that the Commission institute processing guidelines for "core" programs. The comments indicate some confusion over what processing guidelines are and how they would work. For this reason, it may be helpful to set out how we envision they would operate and the reasons why they are desirable in general.

**A. Processing Guidelines Provide Useful Guidance to the FCC Staff, the Public and Broadcasters, But Do Not Operate as Mandatory Requirements**

Prior to the deregulation of radio in 1981 and television in 1984, the Commission received programming information (e.g., quantity of news, public affairs programming) as part of license renewal applications. It accordingly adopted processing guidelines for its renewal staff that would distinguish applications that could be routinely granted and those requiring scrutiny by the Commission itself.<sup>20</sup> With deregulation, programming information was no longer supplied to the Commission but rather is maintained (in a different form, i.e., issue program lists) in the station's public files. The Commission depends upon the public to bring to its attention inadequate public service applications for renewal.

The CTA markedly changed the process as to children's television programming:

The Committee notes that an essential element of this legislation is that broadcasters, as public trustees,

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<sup>20</sup> See Delegation of Authority to the Chief, Broadcast Bureau, 43 FCC 2d 648 (1973); 59 FCC 2d 491 (1976).



report to the FCC their efforts in this respect... Broadcasters...must send their children's television lists to the FCC at the time the FCC is considering licenses of renewal. The Committee recognizes that this last requirement distinguishes this material from all other community issue-oriented programming. That is the Committee's explicit intent.

S. Rep. No. 101-227, 101st Cong., 1st Sess. (1989). It follows that while the public may still participate if it chooses to do so, the Commission has no choice: It must examine the lists of children's educational programming and reach a determination as to whether the licensee has met its obligation to serve the educational needs of children.<sup>21</sup> So in this important area, the renewal staff should have some guideline as to which applications can be routinely granted, and which ones require scrutiny, evaluation and possible further process.

Clearly, the key factor that must be met is that the licensee has presented programming specifically designed to serve the educational and informational needs of children (the "core" programming discussed above). The other pertinent factors such as general audience programming that educates children and non-broadcast efforts can all vary widely in their application to a particular case. It follows that a processing guideline should focus on that factor, i.e., that 'x' number of regularly scheduled hours of such "core" programming presented in time periods where children normally can view the programming. The

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<sup>21</sup> Children's Television Act of 1990, 47 U.S.C.A. Sec. 303b(a).